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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re
12 HOWREY LLP,
13 A District of Columbia Limited Liability
14 Partnership,
15 Debtors.

16 1299 Pennsylvania Avenue
17 Washington, D.C. 20004

18 Employer's Tax I.D. No.: 53-0231650

Case No. 11-31376 DM
Chapter 11
Hon. Dennis Montali

**OBJECTION OF WARNER
INVESTMENTS, L.P. TO DEBTOR'S
MOTION TO USE CASH COLLATERAL**

Date: August 1, 2011
Time: 9:00 a.m.
Place: 235 Pine St., 23rd Floor
San Francisco, CA 94104
Judge: Honorable Dennis Montali

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20 Warner Investments, L.P. ("Warner"), by and through its undersigned counsel, files this
21 objection to Howrey LLP's ("Debtor") continued Motion to Use Cash Collateral. The Court
22 should deny the Debtor authority to use cash collateral absent (i) Debtor's prompt deliver to
23 Warner of all Post-Petition Rent (defined below), in the approximate amount of \$2,839,606.18¹
24 and (ii) Warner receiving adequate assurance that the Debtor will remain current on all future
25 rental obligations under the Lease (defined below).

26
27 ¹ By this reference, Warner reserves the right to increase the amount of its administrative claim in order to include
28 fees and costs that have yet to be billed and/or fully calculated, including, but not limited to, the amount of Debtor's
post-Relief Date (defined below) for tax obligations and attorneys fees and costs (collectively, "Unliquidated
Administrative Fees/Costs").

1 As set forth in greater detail below: (A) Warner, Debtor's landlord for 1299 Pennsylvania
2 Avenue, Washington, D.C. 20004 ("Premises"), has not been paid any rent owed to it since before
3 the filing of the involuntary petition (April 11, 2011) or any administrative rent since the Order for
4 Relief was entered on June 6, 2011 ("Relief Date"); (ii) since the Relief Date, Warner is owed the
5 approximate amount of \$2,839,606.18, plus Unliquidated Administrative Fees/Costs; and (iii) the
6 cash collateral budget [Docket 64-2] does not appear to make a any provision for payment of the
7 administrative rent owed to Warner now or in the future.

8 **Preliminary Statement**

9 1. On March 3, 1992, Warner, as landlord, and Debtor, as tenant, entered into that
10 certain lease for non-residential real property entitled "Office Lease Agreement" ("Office Lease"),
11 as amended, for that certain real property commonly referred to as 1299 Pennsylvania Avenue,
12 Washington, D.C. 20004 ("Premises"). On February 19, 2008, Warner and the Debtor, with
13 regard to a portion of the Premises, entered into that certain agreement entitled "Storage Space
14 Lease Agreement" ("Storage Agreement" together with the Office Lease, collectively, the
15 "Lease"). Declaration of Mei Cheng in Support of Motion to Compel Payment of Administrative
16 Rent, ¶2 ("Cheng Declaration"). Under the terms of the Lease, the Debtor is obligated to pay
17 fixed monthly base rent and certain other additional and related fees and expenses (collectively,
18 "Rent"). Cheng Declaration ¶2.

19 2. Since the Relief Date, the Debtor has operated as a debtor-in-possession and no
20 chapter 11 trustee has been appointed. According to the Declaration of Robert Ruyak in Support
21 of First Day Motions [Doc. 64] the Debtor continues to uses the Premises as its primary business
22 location:

23 8. Howrey presently represents clients in a number of
24 ongoing matters ("Pending Matters"). As part of the wind-
25 down of operations, these Pending Matters are being
handled and/or managed out of Howrey's Washington,
D.C. office.

26 3. Notwithstanding the Debtor's admitted use of and need for the Premises, the
27 Debtor has not paid Warner any Rent for the use of the Premises since February 2011 and its
28

1 present aggregate obligation to Warner is approximately \$7,740,874.72.² Cheng Declaration ¶4.
2 Based on the sums set forth in the budget, the Debtor derives significant revenue from its use of
3 the Premises. Warner is informed and believes that pursuant to the terms of the Interim Cash
4 Collateral budget approved by the Court, many of the Debtor's post-petition creditors, including
5 the Debtor's remaining attorneys and staff and Debtor's pre-petition secured creditor, Citibank,
6 are being paid significant sums post-petition ("Post-Petition Payments"). [Docket 98].

7 4. Since the Relief Date, the Debtor has failed to remit any Rent to Warner as required
8 by the Lease. Cheng Declaration ¶5. For the period June 6, 2011 through June 30, 2011, the
9 Debtor's arrears under the Lease are approximately \$1,303,650.95 ("Partial June Rent"). In
10 addition, the Debtor has failed to deliver Rent due under the Lease for July 2011 in the
11 approximate aggregate amount of \$1,535,955.23 ("July 2011 Rent"). Cheng Declaration ¶5. The
12 Partial June Rent and July 2011 Rent aggregate approximately \$2,839,606.18 and shall be
13 collectively referred to as "Post-Petition Rent." Post-Petition Rent does not include Unliquidated
14 Administrative Fees/Costs.

15 **The Debtor is Obligated to Timely Pay Warner Post-Petition Rent**

16 5. Section 365(d)(3) obligates the Debtor to "timely perform all the obligations...
17 arising from and after the order for relief under any unexpired lease of nonresidential real
18 property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title."
19 11 U.S.C. § 365(d)(3). The Debtor cannot dispute that the obligations contemplated by Section
20 365(d)(3) include the timely payment of Rent. Notwithstanding this obligation, the Debtor
21 appears to have set up its budget to only pay insiders and Citibank. Debtor's continuing failure to
22 pay Warner any Rent is forcing Warner to finance the Debtor's post-petition operations by
23 compelling it to become an involuntarily interest free post-petition lender, financing the Debtor's
24 reorganization efforts, while other administrative creditors enjoy regular Post-Petition Payments
25 under the Court approved cash collateral budget.

26 6. This Court should not authorize the Debtor's continued use of cash collateral

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28 ² Prior to the Relief Date, Warner drew down on the security deposit (letter(s) of credit) posted by the Debtor and applied it against the Debtor's obligation under the Lease.

1 absent (i) the Debtor's prompt deliver to Warner of all Post-Petition Rent and (ii) Warner
2 receiving adequate assurance that the Debtor will remain current on all future rental obligations
3 under the Lease.

4 **WHEREFORE**, Warner prays for an order denying the Debtor authority to use cash
5 collateral absent Debtor (i) promptly delivering to Warner of all Post-Petition Rent and (ii)
6 remaining current on all future Rent obligations under the Lease.

7 DATED: July 20, 2011

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

9 By: /s/ Gregg S. Kleiner

10 GREGG S. KLEINER, ATTORNEYS FOR WARNER
11 INVESTMENTS, L.P.